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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JGX, INC., et al.,

Plaintiffs,

v.

JOHN HANDLERY, et al.,

Defendants.

Case No. [17-cv-00287-BLF](#)

**ORDER GRANTING MOTION TO
ALLOW TIME FOR DISCOVERY
UNDER FEDERAL RULE OF CIVIL
PROCEDURE 56(D); AMENDING
BRIEFING SCHEDULE**

[Re: ECF 66]

On April 17, 2019, Defendants Jon Handlery and Handlery Hotels moved for summary judgment and noticed a hearing on October 10, 2019. ECF 63. Per the Court's case management order and the parties' case management stipulation, the last day to hear motions for summary judgment is in January 2020 and fact discovery does not end until October 1, 2019. ECF 27, 32. On May 1, 2019, Plaintiffs JGX, Inc., Nick Bovis, Bovis Foods, LLC, and SMTM Technology, LLC filed a motion to allow time for discovery under Federal Rule of Civil Procedure 56(d) and to modify the briefing schedule for defendants' motion for summary judgment. Mot., ECF 66. In the instant motion, Plaintiffs seek to extend the deadline to oppose the pending summary judgment motion to August 1, 2019, to allow them time to complete discovery necessary to oppose the motion. *See generally* Mot. Defendants oppose this extension but were willing to stipulate to extend the deadline to July 11, 2019. *See* Opp. at 1, n.1, ECF 71.

Federal Rule of Civil Procedure 56(d) states that "[i]f a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order." In ruling on a Rule 56(d) motion, a district court considers "whether the movant had sufficient opportunity to conduct

discovery[;] whether the movant was diligent[;] whether the information sought is based on mere speculation[;] and whether allowing additional discovery would preclude summary judgment.” *Martinez v. Columbia Sportswear USA Corp.*, 553 F. App’x 760, 761 (9th Cir. 2014).

Having considered these factors, the Court holds that Plaintiffs may have more time to take discovery necessary to oppose the summary judgment motion. Fact discovery in this case does not close until October 1, 2019, and Defendants filed their motion well over six months before the deadline to do so. Courts in this district routinely provide nonmovants additional time to conduct discovery when neither the discovery deadline nor the deadline for dispositive motions has passed. *See Violan v. On Lok Senior Health Servs.*, No. 12-CV-05739-WHO, 2013 WL 5978454, at *3 (N.D. Cal. Nov. 7, 2013); *ASUS Computer Int’l v. Round Rock Research, LLC*, No. 12-CV-02099-JST, 2013 WL 5545276, at *2 (N.D. Cal. Oct. 8, 2013); *LMD Integrated Logistic Servs., Inc. v. Mercer Distribution Servs., LLC*, No. 10-CV-1381-BHS, 2011 WL 1456145, at *2 (W.D. Wash. Apr. 14, 2011) (“Although LMD argues that Defendants have waited several months to begin making discovery requests, the Court does not find that Defendants have exhibited a lack of diligence as the discovery cutoff in this case, as well as the dispositive motion deadline, are still months away.”). Moreover, the Court declines to find that Plaintiffs have not been diligent, as Defendants did not produce all discovery responses until December 2018, and Plaintiff now has key depositions scheduled (well within the discovery deadline). *See* Danitz Decl. ISO Mot. ¶ 4, ECF 66-1; Reply at 1 n.1, ECF 72. And Plaintiffs have demonstrated that much of the anticipated discovery exists and is essential to opposing the motion. *See* Danitz Decl. ¶¶ 5, 8. Finally, allowing the extension will not change any deadlines in the case except the briefing schedule on the summary judgment motion.

Accordingly, Plaintiffs’ motion is GRANTED. Plaintiffs’ deadline to file an amended opposition is **August 1, 2019** and Defendants’ deadline to file a reply is **August 15, 2019**.

IT IS SO ORDERED.

Dated: May 9, 2019



BETH LABSON FREEMAN
United States District Judge